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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

UNITED STATES OF AMERICA,

Plaintiff,

VS.

ANTHONY SCOTT LEVANDOWSKI,

Defendant.

NO. CR-00377 WHA

San Francisco, California

Tuesday, August 4, 2020

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

For Plaintiff:

DAVID L. ANDERSON  
United States Attorney  
450 Golden Gate Avenue, 11th Floor  
San Francisco, California 94102

**BY: KATHERINE L. WAWRZYNIAK  
ANDREW F. DAWSON  
ASSISTANT UNITED STATES ATTORNEYS**

For Defendant:

RAMSEY & EHRLICH LLP  
803 Hearst Avenue  
Berkeley, California 94710

**BY: ISMAIL RAMSEY, ATTORNEY AT LAW  
MILES EHRLICH, ATTORNEY AT LAW  
AMY CRAIG, ATTORNEY AT LAW**

Also Present:

**Karen Mar, U.S. Probation  
(Telephonically)**

REPORTED TELEPHONICALLY BY: ANA M. DUB, CSR NO. 7445  
RDR, CRR, CCRR, CRG, CCG  
OFFICIAL UNITED STATES REPORTER

Tuesday - August 4, 2020

1:59 p.m.

P R O C E E D I N G S

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(The following proceedings were had in open court, the defendant being personally present, out of custody, together with counsel:)

**THE CLERK:** All rise. This court is now in session. The Honorable William Alsup presiding.

Calling Criminal Action 19-377, United States versus Anthony Scott Levandowski.

Counsel, please state your appearances for the record.

**MS. WAWRZYNIAK:** Good afternoon, Your Honor. Katherine Wawrzyniak and Andrew Dawson for the United States.

**MR. RAMSEY:** Good afternoon, Your Honor. Ismail Ramsey on behalf of Mr. Levandowski, and I'm here with two of my co-counsel.

**MR. EHRLICH:** Good afternoon, Your Honor. Miles Ehrlich on behalf of Mr. Levandowski.

**MS. CRAIG:** Good afternoon. Amy Craig on behalf of Mr. Levandowski.

**THE COURT:** Mr. Levandowski, welcome to you.

**MR. RAMSEY:** Your Honor, if it's okay with the Court, I was going to ask to use a face shield.

**THE COURT:** All right with me.

**MR. RAMSEY:** I also discussed it with --

1           **THE COURT:** Anyone object?

2           **MS. WAWRZYNIAK:** No, Your Honor.

3           **THE COURT:** All right.

4           **MR. RAMSEY:** Thanks. With my glasses, it makes things  
5 a little --

6           **THE COURT:** You can take your -- yeah. Take off your  
7 mask, if you wish. And your glasses are -- there we go.

8           **MR. RAMSEY:** Thank you, Your Honor.

9           (Stenographer interrupts for clarification of the record.)

10          **MR. RAMSEY:** I'm sorry. This is Mr. Ramsey. And I'll  
11 try to make sure that I speak into the microphone and announce  
12 myself before -- any time I speak.

13          **THE COURT:** All right. Mr. Levandowski, you're going  
14 to have to come up here so we can do the guilty plea part  
15 first.

16          And let me say to the members of the public, every time  
17 you come on and off the line, it makes an irritating noise. So  
18 at least once you get on the line, please stay on the line so  
19 that we don't have those noises.

20          Let's wait a few minutes to see if anyone else is going to  
21 be making that noise.

22                       (Pause in proceedings.)

23          **THE COURT:** All right. So what I understand we're  
24 going to do today is, first, have a guilty plea and, second,  
25 have sentencing, at the request of the lawyers. Correct?

1           **MR. RAMSEY:** That is correct.

2           **MS. WAWRZYNIAK:** Yes, Your Honor.

3           **MR. RAMSEY:** That is correct, Your Honor. This is  
4 Mr. Ramsey speaking.

5           I would just note for the court reporter that right now,  
6 with respect to Mr. Levandowski, it's going to be Mr. Ramsey  
7 doing all the speaking unless indicated otherwise.

8           (Stenographer interrupts for clarification of the record.)

9           **MR. RAMSEY:** I said unless -- this is Mr. Ramsey  
10 speaking, and I'm going to be doing all the speaking for the  
11 defense unless otherwise noted.

12           **THE COURT:** Very good.

13           And because of that face shield, you need to have the  
14 microphone under the shield rather than in front of it.  
15 Otherwise, it comes out --

16           **MR. RAMSEY:** Yes, Your Honor.

17           **THE COURT:** -- garbled.

18           Okay. Well, the other lawyers can sit down, if you wish.

19           Okay. The clerk will now swear in Mr. Levandowski.

20           Please raise your right hand.

21                               (Defendant sworn.)

22           **THE DEFENDANT:** I do.

23           **THE COURT:** Thank you. You can put your hand down.

24           All right. So I'm going to take mine off -- I've got this  
25 plastic shield here -- just so you can hear me better.

1 Please tell us your full and correct name.

2 **THE DEFENDANT:** My name is Anthony Scott Levandowski.

3 **THE COURT:** How old are you?

4 **THE DEFENDANT:** I'm 40 years old.

5 **THE COURT:** How far did you go in school?

6 **THE DEFENDANT:** I obtained my graduate degree from  
7 UC Berkeley.

8 **THE COURT:** And are you thinking clearly today?

9 **THE DEFENDANT:** Yes, I am, Your Honor.

10 **THE COURT:** Are you under the influence of anything?

11 **THE DEFENDANT:** No, Your Honor.

12 **THE COURT:** Are you being treated for any mental  
13 illness?

14 **THE DEFENDANT:** No, Your Honor.

15 **THE COURT:** Do you understand what you'd be pleading  
16 guilty to?

17 **THE DEFENDANT:** Yes, Your Honor.

18 **THE COURT:** Please tell us in your own words what that  
19 would be.

20 **THE DEFENDANT:** I took the Chauffeur Team weekly  
21 notes, and I intended to --

22 (Stenographer interrupts for clarification of the record.)

23 **THE CLERK:** If anyone listening in on the phone could  
24 please mute your phone, that would be appreciated by the Court.

25 **THE COURT:** I need to tell everyone listening on the

1 phone, we can hear background noise. Somebody has not muted  
2 their phone.

3 If this continues, I'm going to direct the clerk to  
4 terminate the telephone part so that we can hear in the  
5 courtroom. So please be respectful of the proceedings.

6 My last question is: Do you understand what the charges  
7 against you are and what you would be pleading -- at least what  
8 you'd be pleading guilty to?

9 **THE DEFENDANT:** My answer is yes, Your Honor. It's  
10 one count of theft and attempted theft of trade secrets.

11 **THE COURT:** All right. Have you discussed this with  
12 your counsel?

13 **THE DEFENDANT:** Yes, I have, Your Honor.

14 **THE COURT:** Have you gone over with him all the ways  
15 to defend against this case?

16 **THE DEFENDANT:** Yes, I have, Your Honor.

17 **THE COURT:** What is the name of your lawyer?

18 **THE DEFENDANT:** I have many of them, but Izzy is  
19 standing next to me, and we have Miles on the left and Amy.

20 **THE COURT:** All right. Are you fully satisfied with  
21 their advice and counsel?

22 **THE DEFENDANT:** Yes, I am, Your Honor.

23 **THE COURT:** I understand your willingness to plead  
24 guilty is a result of discussions between your lawyers and  
25 the Government lawyer that led up to this thing called a plea

1 agreement. Is that true?

2 **THE DEFENDANT:** That is correct, Your Honor.

3 **THE COURT:** And have you read the agreement?

4 **THE DEFENDANT:** Yes, I have, Your Honor.

5 **THE COURT:** Did you understand it?

6 **THE DEFENDANT:** Yes, I do.

7 **THE COURT:** Did you discuss it with your lawyers?

8 **THE DEFENDANT:** I discussed it with my attorneys, yes.

9 **THE COURT:** Did you sign this agreement?

10 **THE DEFENDANT:** I did sign it, yes.

11 **THE COURT:** All right. Is this your full and complete  
12 agreement with the U.S. Government?

13 **THE DEFENDANT:** That's my understanding, yes.

14 **THE COURT:** Okay. Now, I'd like to go over with you  
15 what the -- what the elements are of this offense that you  
16 would be pleading guilty to.

17 This is a theft and attempted theft of trade secrets. And  
18 the elements are that you intended to convert -- that basically  
19 means steal -- a trade secret to the economic benefit of  
20 somebody other than the owner; and that the trade secret was  
21 related to or intended for use in interstate or foreign  
22 commerce; that you intended or knew that the offense would  
23 injure the owner; and that you stole or, without authorization,  
24 appropriated, took, carried away, or concealed such trade  
25 secret information.

1 Do you understand that?

2 **THE DEFENDANT:** I do, Your Honor.

3 **THE COURT:** Now, if you plead guilty to that, you  
4 could get up to ten years in prison, up to a \$250,000 fine, and  
5 requirement to pay restitution to the victim, supervised  
6 release for three years, and a \$100 mandatory special  
7 assessment.

8 Do you understand all that?

9 **THE DEFENDANT:** I do, Your Honor.

10 **THE COURT:** Okay. Now, I need to go over with you  
11 what the procedure will be for deciding on the actual sentence.

12 If you plead guilty, we will proceed today to a sentencing  
13 hearing. And the Court would have to consider the guidelines,  
14 the information in the PSR, and the arguments of counsel and,  
15 of course, your own statement. And there were quite a lot of  
16 materials submitted, especially by your side, and videos  
17 that -- voluminous. All that would be considered.

18 The judge is required to select the lowest sentence that  
19 will carry out the sentencing objectives of our Congress as set  
20 forth in the Sentencing Act.

21 Now, until I go through this argument and hear everything,  
22 I can't tell you what the answer is going to be. It could be  
23 higher than the guideline range. It could be lower than the  
24 guideline range. It could be right in the middle of the  
25 guideline range. So you're taking a gamble by pleading guilty.



1 And the gamble is that you may wind up getting a more harsh  
2 sentence than you expect or you could get an easier sentence  
3 than you expect, but you just don't know.

4 Understand?

5 **THE DEFENDANT:** I understand, Your Honor.

6 **THE COURT:** All right. Now, this will be a felony  
7 that you're pleading to.

8 Do you understand?

9 **THE DEFENDANT:** I do understand that, Your Honor.

10 **THE COURT:** And for the rest of your life and career,  
11 you would be known as a convicted felon.

12 Do you understand that?

13 **THE DEFENDANT:** I understand that, Your Honor.

14 **THE COURT:** In our system, we don't have parole in the  
15 federal system. So whatever prison sentence you get, you would  
16 serve it without the benefit of parole.

17 Do you understand?

18 **THE DEFENDANT:** I understand that, Your Honor.

19 **THE COURT:** And when you plead guilty, you're stuck  
20 with it. You can't take back your guilty plea.

21 You understand?

22 **THE DEFENDANT:** I understand, Your Honor.

23 **THE COURT:** All right. Now, I want to change the  
24 subject.

25 You have the right to go to trial and see if

1 the Government can prove the case.

2 Understand?

3 **THE DEFENDANT:** I understand, Your Honor.

4 **THE COURT:** Sometimes even a guilty person goes to  
5 trial and the Government can't persuade the jury so the guilty  
6 person gets off.

7 Do you understand that?

8 **THE DEFENDANT:** I understand, Your Honor.

9 **THE COURT:** You'd be giving up that opportunity.

10 Do you understand?

11 **THE DEFENDANT:** I do.

12 **THE COURT:** Mr. Ramsey, lift the microphone so that it  
13 will catch your client's voice a little better. He has to bend  
14 over every time.

15 Okay. You have the right to go to trial. And  
16 the Government cannot use you as a witness against yourself.  
17 The Government has to try to prove the case the hard way, by  
18 calling other witnesses. You have the right to be here to see  
19 and hear all witnesses against you and to work with your  
20 excellent counsel for the best possible cross-examinations of  
21 all of those witnesses.

22 Understand?

23 **THE DEFENDANT:** I understand.

24 **THE COURT:** When the Government finishes putting on  
25 its case, you have the option to put on a defense, but you're

1 not obligated to because the burden is never on you; it's  
2 always on the Government. And so while you have the option,  
3 you have no requirement to put on a defense.

4 Understood?

5 **THE DEFENDANT:** I understand, Your Honor.

6 **THE COURT:** If you chose to exercise it, we would  
7 subpoena the people you wanted to call as witnesses, obligate  
8 them to tell the truth by placing them under oath. You could  
9 testify in your own defense, subject to cross-examination; but  
10 if you chose not to testify, that would be perfectly okay. And  
11 we would explain to the jury that you have a constitutional  
12 right not to testify and that the jury cannot hold it against  
13 you because you exercised that right.

14 Understand?

15 **THE DEFENDANT:** I do, Your Honor.

16 **THE COURT:** Once all the evidence was before the jury,  
17 the jury, 12 people, would go into the jury room and ask this  
18 question: Has the Government proven the case beyond a  
19 reasonable doubt?

20 If all 12 people said, "Yes, the Government had done  
21 that," then they would convict you. On the other hand, if even  
22 one person on the jury said, "No, no. The Government fell  
23 short in its proof," then that jury could not convict you.

24 Do you understand that?

25 **THE DEFENDANT:** I do, Your Honor.

1           **THE COURT:** And if you were convicted, you would  
2 ordinarily have the right to appeal to the Court of Appeals,  
3 both the verdict of guilty as well as the sentence.

4           Understood?

5           **THE DEFENDANT:** I understand.

6           **THE COURT:** But if you plead guilty today, you will be  
7 giving up those rights of appeal.

8           Do you understand that?

9           **THE DEFENDANT:** I do, Your Honor.

10          **THE COURT:** Well, here's the thing. All of those  
11 rights that I recited to you about going to trial and appeal,  
12 do you think you understand those rights?

13          **THE DEFENDANT:** I do, Your Honor.

14          **THE COURT:** Do you want to give up those rights and  
15 plead guilty?

16          **THE DEFENDANT:** Yes, Your Honor.

17          **THE COURT:** One second.

18          Mr. Ramsey?

19          **MR. RAMSEY:** Could I just approach Ms. Wawrzyniak for  
20 just a second?

21          **THE COURT:** Of course.

22          **MS. WAWRZYNIAK:** Your Honor, we would like to point  
23 out one change that has been made to the plea agreement since  
24 it was filed on March 19th. It's a change to paragraph 5, and  
25 the parties have agreed to strike the last sentence, which

1 reads (reading):

2 "I also agree not to seek relief under  
3 18 U.S.C., Section 3582."

4 That's a waiver of the right to file a motion for  
5 compassionate release. And since March, my office has made a  
6 policy change and removed that language from all plea  
7 agreements. So in fairness to Mr. Levandowski, before we enter  
8 the plea today, I want to note for the record that that last  
9 sentence should be stricken.

10 **THE COURT:** All right. So --

11 (Stenographer interrupts for clarification of the record.)

12 **THE COURT:** That's Ms. Wawrzyniak.

13 Okay. Thank you for that clarification.

14 All right. So to go back to where I was, you want to  
15 plead guilty and give up all of those rights. True?

16 **THE DEFENDANT:** That's correct, Your Honor.

17 **THE COURT:** And you want to do that freely and  
18 voluntarily?

19 **THE DEFENDANT:** Yes.

20 **THE COURT:** Has anyone put any pressure on you to  
21 plead guilty?

22 **THE DEFENDANT:** No, Your Honor.

23 **THE COURT:** How about making any threats? Has anyone  
24 threatened you?

25 **THE DEFENDANT:** No, Your Honor.

1           **THE COURT:** Anyone given you any promises?

2           **THE DEFENDANT:** No, Your Honor.

3           **THE COURT:** Do you want to plead guilty of your own  
4 free will?

5           **THE DEFENDANT:** I do, Your Honor.

6           **THE COURT:** All right. I need to go over with you the  
7 basis for your plea. And what I'm going to do is paraphrase  
8 from the statement in the plea agreement. I won't read it  
9 exactly, but I will paraphrase, and then I'll ask you after  
10 each statement if it's correct. So listen carefully.

11           In April 2007, you joined Google. True?

12           **THE DEFENDANT:** Yes.

13           **THE COURT:** As part of the V-u Tool Team, VuTool Team.  
14 True?

15           **THE DEFENDANT:** Yes.

16           **THE COURT:** That was to work on Google Street View;  
17 right?

18           **THE DEFENDANT:** That's correct.

19           **THE COURT:** And in about 2009 you co-founded  
20 Project Chauffeur; right?

21           **THE DEFENDANT:** Correct.

22           **THE COURT:** And that was the self-driving car program.  
23 True?

24           **THE DEFENDANT:** Yes.

25           **THE COURT:** And you worked on the self-driving car

1 program for approximately seven years. True?

2 **THE DEFENDANT:** That's correct.

3 **THE COURT:** In the course of doing that, you were  
4 aware that your employment agreement obligated you to keep  
5 Google's valuable non-public information confidential. True?

6 **THE DEFENDANT:** That's correct.

7 **THE COURT:** And you understand that non-public  
8 information related to Project Chauffeur was sensitive and  
9 subject to that confidentiality requirement. True?

10 **THE DEFENDANT:** That's true.

11 **THE COURT:** In late 2015, you considered leaving  
12 Google. True?

13 **THE DEFENDANT:** That's correct.

14 **THE COURT:** And that was to start a new self-driving  
15 company. True?

16 **THE DEFENDANT:** Correct.

17 **THE COURT:** Initially, it was called 280 Systems.  
18 Right?

19 **THE DEFENDANT:** Correct.

20 **THE COURT:** But later you changed the name to  
21 Ottomotto, O-t-t-o-m-o-t-t-o. True?

22 **THE DEFENDANT:** That's correct.

23 **THE COURT:** About the same time, you began having  
24 discussions with Uber about Uber's potential investment in  
25 Ottomotto. True?

1           **THE DEFENDANT:** That is correct.

2           **THE COURT:** These negotiations intensified in  
3 December 2015 while you were still a Google employee. True?

4           **THE DEFENDANT:** That is true.

5           **THE COURT:** Uber ultimately acquired Ottomotto in  
6 about August 2016. True?

7           **THE DEFENDANT:** That is true.

8           **THE COURT:** Your employment with Google ended on or  
9 about January 27, 2016. True?

10          **THE DEFENDANT:** That is correct.

11          **THE COURT:** Prior to your departure, you downloaded  
12 thousands of files related to Project Chauffeur. True?

13          **THE DEFENDANT:** That is correct.

14          **THE COURT:** On or about December 11th, 2015, you  
15 downloaded approximately 14,000 files from an internal  
16 password-protected Google server known as SVN, which was hosted  
17 on Google's network. True?

18          **THE DEFENDANT:** That is true.

19          **THE COURT:** On December 14th, 2015, you transferred  
20 those SVN files from your Google-issued laptop to your personal  
21 laptop. True?

22          **THE DEFENDANT:** True.

23          **THE COURT:** In addition, prior to your departure from  
24 Google, you downloaded a variety of files from a corporate  
25 Google Drive repository to your personal laptop. True?



1           **THE DEFENDANT:** That is true.

2           **THE COURT:** You downloaded these files with the intent  
3 to use them for your own personal benefit and understood that  
4 you were not authorized to take the files for that purpose.  
5 True?

6           **THE DEFENDANT:** That is true.

7           **THE COURT:** In all, you downloaded at least 20 files  
8 from Google Drive between October 2015 and January 2016,  
9 including an internal tracking document entitled "Chauffeur TL  
10 Weekly Updates Q4 2015," hereinafter "the Chauffeur weekly  
11 update." True?

12           **THE DEFENDANT:** That is true.

13           **THE COURT:** Now, I need to ask counsel a question; so  
14 just hold your thought there.

15           This says at least 20 files, but up above, it says 14,000.  
16 So how do you reconcile that?

17           **MS. WAWRZYNIAK:** So there's a distinction here,  
18 Your Honor.

19           There were 14,000 files that were in the SVN server, which  
20 was a digital repository. Those files were the engineering  
21 schematics, pieces and parts that went into the hardware, and  
22 they were all in a collection from this one server.

23           And then, in addition, the defendant was separately going  
24 to a different repository of information, the Project Chauffeur  
25 Google Drive, and downloading from the Google Drive individual

1 documents.

2 So in this paragraph, he's admitting both to getting the  
3 files from the SVN and also downloading other documents from  
4 the Google Drive.

5 **THE COURT:** All right.

6 Did you understand what counsel just said?

7 **THE DEFENDANT:** I do.

8 **THE COURT:** Is that correct?

9 **THE DEFENDANT:** That is correct.

10 **THE COURT:** All right. You down- -- I'm continuing  
11 now.

12 You downloaded this file with the intent to use it for the  
13 benefit of someone other than Google. Correct?

14 **THE DEFENDANT:** Correct.

15 **THE COURT:** The Chauffeur Weekly Update contained a  
16 variety of details regarding the status of Google's  
17 self-driving car program. True?

18 **THE DEFENDANT:** That is true.

19 **THE COURT:** It included the Project Chauffeur Team's  
20 quarterly goals and weekly metrics, your team's OKRs, as well  
21 as summaries of technical challenges currently faced by the  
22 program and notes related to previous challenges that had been  
23 overcome. True?

24 **THE DEFENDANT:** That is true.

25 **THE COURT:** You downloaded the Chauffeur Weekly Update

1 to your personal laptop on or about January 11, 2016, and you  
2 accessed the document after your resignation from Google, which  
3 occurred on or about January 27, 2016. True?

4 **THE DEFENDANT:** I did, Your Honor.

5 **THE COURT:** In particular, you understand and admit  
6 that, as indicated by a third-party review of your laptop, you  
7 last accessed this file on February 24, 2016, nearly a month  
8 after your departure from Google. True?

9 **THE DEFENDANT:** That is true, Your Honor.

10 **THE COURT:** You admit that as of January or  
11 February 2016, the Chauffeur Weekly Update was Google's  
12 property and qualified as a trade secret. True?

13 **THE DEFENDANT:** That's true, Your Honor.

14 **THE COURT:** The document was not generally known or  
15 readily ascertainable through proper means by another person in  
16 the public who could obtain economic benefit from the  
17 disclosure or use of the information. True?

18 **THE DEFENDANT:** That is true, Your Honor.

19 **THE COURT:** Google took reasonable measures to keep  
20 the document secret, and the document derived independent  
21 economic value, actual or potential, from being secret. True?

22 **THE DEFENDANT:** That is true, Your Honor.

23 **THE COURT:** You further admit that you intended to  
24 convert the Chauffeur Weekly Update for the economic benefit of  
25 somebody other than the owner. True?

1           **THE DEFENDANT:** That is true.

2           **THE COURT:** In particular, you intended to use the  
3 Chauffeur tracking document to benefit yourself and Uber.  
4 True?

5           **THE DEFENDANT:** That is true.

6           **THE COURT:** You also admit that the weekly --  
7 Chauffeur Weekly Update was related to Google's self-driving  
8 car technology. True?

9           **THE DEFENDANT:** True.

10          **THE COURT:** And that the product was intended for use  
11 in interstate and foreign commerce. True?

12          **THE DEFENDANT:** True.

13          **THE COURT:** And that you knew your misappropriation  
14 and unauthorized -- unauthorized -- possession of the Chauffeur  
15 Weekly Update would injure Google. True?

16          **THE DEFENDANT:** That is true, Your Honor.

17          **THE COURT:** And finally, for purposes of the  
18 sentencing guidelines, the lost value for purposes of  
19 Section 2B1.1 of the guidelines is more than 550,000 but less  
20 than or equal to 1.5 million. True?

21          **THE DEFENDANT:** That is true, Your Honor.

22          **THE COURT:** And you and the Government agree that this  
23 represents a reasonable estimate of the loss attributable to  
24 your offense conduct, a loss that is real but difficult to  
25 calculate. True?

1           **THE DEFENDANT:** That is true.

2           **THE COURT:** You understand that Google and its  
3 successor-in-interest, Waymo, are not bound by the parties'  
4 agreement and may assert in this or future proceedings that the  
5 loss amount associated with Chauffeur Weekly Update was lower  
6 or higher. True?

7           **THE DEFENDANT:** True.

8           **THE COURT:** Anything more the Government wishes to add  
9 to that statement?

10          **MS. WAWRZYNIAK:** No, Your Honor.

11          **THE COURT:** Mr. Ramsey, anything more?

12          **MR. RAMSEY:** No, Your Honor.

13          **THE COURT:** All right. So we're coming to the key  
14 point. Do you still wish to go forward and plead guilty today?

15          **THE DEFENDANT:** I do, Your Honor.

16          **THE COURT:** And do you have any questions for me  
17 before we do so?

18          **MR. RAMSEY:** I just -- this is Mr. Ramsey speaking.  
19 Your Honor, I just have one question. I just ask  
20 the Court to formally strike that last sentence in paragraph 5  
21 from the plea agreement.

22          **THE COURT:** It's the sentence that reads (reading):

23                "I also agree not to seek relief under  
24 18 U.S.C. 3582."

25          **MR. RAMSEY:** Correct.

1           **MS. WAWRZYNIAK:** Correct, Your Honor.

2           **THE COURT:** I am striking that out, putting my  
3 initials by it.

4           **MS. WAWRZYNIAK:** And before you take the plea,  
5 Your Honor, if you could ask the defendant to affirm that he's  
6 agreeing to pay restitution in the amount of \$756,499.22, as  
7 provided in paragraph 9?

8           **THE COURT:** Sir?

9           **THE DEFENDANT:** I agree, Your Honor.

10          **THE COURT:** Is that the check?

11          **MR. RAMSEY:** That is the check, Your Honor.

12          **THE COURT:** All right. Great.

13          Okay. So do you have any questions for me?

14          **THE DEFENDANT:** I do not, Your Honor.

15          **THE COURT:** All right. It's Count 33?

16          **MS. WAWRZYNIAK:** Yes, Your Honor.

17          **THE COURT:** Okay. So with respect to Count 33 in the  
18 Indictment, Mr. Levandowski, I'm now going to ask you the  
19 official question. Are you ready?

20          **THE DEFENDANT:** Yes.

21          **THE COURT:** How do you plead to Count 33 in the  
22 Indictment? Guilty or not?

23          **THE DEFENDANT:** I plead guilty, Your Honor.

24          **THE COURT:** Very well. I'm going to do what you've  
25 asked and find that you're fully competent and capable of

1 entering an informed plea; that you are aware of the nature of  
2 the charge against you and the possible consequences of  
3 pleading guilty. Your plea is supported by a factual basis.  
4 Your plea is voluntary and informed. Therefore, I'm going to  
5 accept your plea of guilty and adjudge you convicted on that  
6 count.

7 So good for you. Normally, we would have sentencing about  
8 90 days from now; but because of the way you lawyers have  
9 organized it, we're going to proceed to sentencing immediately.  
10 Correct?

11 **MS. WAWRZYNIAK:** Yes, Your Honor.

12 **MR. RAMSEY:** Correct, Your Honor.

13 **THE COURT:** Okay. So, Mr. Levandowski, do you  
14 understand that we'll proceed immediately to sentencing?

15 **THE DEFENDANT:** I understand, Your Honor.

16 **THE COURT:** Okay. Great.

17 So I need to ask you if you have read this document called  
18 a Presentence Investigation Report.

19 **THE DEFENDANT:** I have, Your Honor.

20 **THE COURT:** Okay. Are there any unresolved  
21 objections?

22 **MR. RAMSEY:** Yes, there are, Your Honor.

23 Again, this is Mr. Ramsey, for the record.

24 The Government and the defense has conferred on these two  
25 issues and I believe we agree. But I would point you to two

1 places.

2 First is paragraph 20, Your Honor, of the PSR, which is on  
3 the report page 7 in the bottom. And so at the beginning of  
4 that paragraph it states (reading):

5 "The government alleged that 33 of the files  
6 Levandowski took were trade secrets."

7 Two sentences after that it says (reading):

8 "The 26 files were 'engineering...."

9 We are just requesting that the word "allegedly" be  
10 entered between "were" and "engineering" at the bottom of the  
11 page.

12 And, again, I don't think either -- the parties have  
13 conferred, and that's acceptable.

14 And when the Court is ready to move on --

15 **THE COURT:** Wait a second.

16 Did you say you agree to that change?

17 **MS. WAWRZYNIAK:** Yes, Your Honor.

18 **THE COURT:** All right. So --

19 **MS. WAWRZYNIAK:** It should read "The 26 files were  
20 allegedly 'engineering information' within the statutory  
21 definition of 'trade secret.'"

22 **THE COURT:** All right. I make that change, and my  
23 probation officer will make that change.

24 What's next?

25 **MR. RAMSEY:** Next, Your Honor, is on page 20 of the



1 report, and this goes to the balance sheet. But on page 20 of  
2 the report, it's in paragraph 78, at the very top, two lines  
3 down, it describes the asset -- one of the assets of  
4 Mr. Levandowski, \$170,743,444. That is described as "Total  
5 Investments." I think that is more accurately described as an  
6 indemnification claim.

7 And that is consistent with what -- with how  
8 Mr. Levandowski has described it in his bankruptcy filing.

9 **THE COURT:** I'm just -- sorry. What is the change?

10 **MR. RAMSEY:** The change is to change the term "Total  
11 Investments" to "Indemnification Claim." It's not an  
12 investment as much as it is a claim against Uber that he  
13 possesses.

14 **THE COURT:** Are you okay with that?

15 **MS. WAWRZYNIAK:** Yes, Your Honor. And I'll address  
16 this indemnification claim in my oral argument today.

17 **THE COURT:** All right. Okay. "Total Investments -  
18 Pass Through" is changed to what?

19 **MR. RAMSEY:** The term that should be changed is just  
20 where it says -- excuse me -- two lines below that, Your Honor.  
21 So you said "Total Investments - Pass Through." Then below  
22 that is "Total Pensco Roth IRA," and then below that it says  
23 "Total Investments."

24 So the bottom "Total Investments" should just be changed  
25 to "Indemnification Claim."

1           **THE COURT:** And the number that's associated with that  
2 is 170-plus?

3           **MR. RAMSEY:** Yes, Your Honor.

4           **THE COURT:** Okay. Did my probation officer get that?

5           **MS. MAR:** Yes, Your Honor. This is Karen Mar from  
6 Probation. I did get that information.

7           **THE COURT:** Thank you. Make that change.

8           All right. Okay. So those are the two changes to the  
9 report. And no other changes?

10          **MR. RAMSEY:** That is correct, Your Honor.

11          **THE COURT:** All right. So the way I would like to  
12 proceed here -- by the way, Mr. Levandowski is free to stand  
13 there if he wishes. He's also free to have a seat because we  
14 could be talking for a long time. It's completely up to him.  
15 I don't want to inconvenience anyone.

16          All right. We're going to start first with Mr. Ramsey,  
17 and then we'll go to the Government, and then we'll go to  
18 Mr. Levandowski, and then the Court will have to make a  
19 decision.

20          Now, Mr. Ramsey, please remember that you need to speak  
21 with the microphone under your shield so that it doesn't get  
22 garbled. I can hear you fine most of the time. Sometimes it's  
23 a little hard.

24          **MR. RAMSEY:** Yes, Your Honor. If you give me just a  
25 second, then I can arrange the microphone so that it's closer.

1           **THE COURT:** Oh, by the way, is there any victim  
2 present on the phone or otherwise?

3           **MS. WAWRZYNIAK:** No, Your Honor. My understanding is  
4 that the victim of this -- in this case, Waymo, they submitted  
5 a victim impact statement which was attached to my sentencing  
6 memo, but they do not wish to address the Court today.

7           **THE COURT:** All right. I got it. Okay.

8           So, Mr. Ramsey, the floor is yours. I'm going to put my  
9 mask back on, since I'll mostly be listening.

10          **MR. RAMSEY:** Thank you, Your Honor.

11          Your Honor, you pointed out earlier that the sentence --  
12 that what the Court is charged with doing today is fashioning a  
13 sentence that would be sufficient but not greater than  
14 necessary to meet the statutory objectives of sentencing as  
15 laid down by the Congress.

16          We believe that in this case, a sentence of 12 months home  
17 confinement, a maximum guidelines range fine of \$95,000, and  
18 three years of supervised release, additionally with the  
19 condition that Mr. Levandowski do 200 hours of community  
20 service, a component of which must be 12 public talks online  
21 or, if possible, in person to relevant engineering and  
22 engineering school communities about what he's learned from  
23 this case and what he's learned about it and attempting to  
24 avoid or to prevent and deter potential trade secret thefts in  
25 the future. In addition, finally, a restitution order of the

1 \$766,000 that's been discussed.

2 I'd like to talk to you today about some of those  
3 statutory factors. I know that the Court has reviewed, as you  
4 noted, the voluminous papers that we submitted, as well as the  
5 video, but I'd like to highlight a couple of things.

6 First, I'd like to talk about Mr. Levandowski's personal  
7 background, his history and characteristics, which is one of  
8 the factors under 3553(a).

9 I think what is clear from the letters that were submitted  
10 to this Court is that Anthony is someone who never hesitates to  
11 help other people and to do so in times of need.

12 Unfortunately, today, because of the pandemic, we're not able  
13 to have individuals here present in the courtroom; but I think  
14 the sheer volume of letters demonstrates the amount of support  
15 that Mr. Levandowski has from his family and his community.

16 I think it was noteworthy the number of longtime friends who've  
17 known him for years who could talk to his character and the  
18 sort of things that he's done over the years. The video itself  
19 was particularly useful in that, and the reason we submitted  
20 the video was because of the pandemic and to give you a sense  
21 of the individuals who can't be here today but who wanted to  
22 make clear, in a personal way, the way that Anthony has touched  
23 their lives.

24 What was clear from it was the period over which  
25 Mr. Levandowski has touched people. These were people who'd

1 known him from as far back as his time living in Belgium,  
2 individuals who'd known him since he was five years old to  
3 people who had known him while he was at University High to  
4 people who had known him while he was at UC Berkeley to people  
5 who knew him while he was working on the VuTool Project, all  
6 the way through Street View and beyond, and also people who  
7 know him today during his time at Pronto and could talk about  
8 his character and the life's experiences and how he has felt  
9 coming out of -- out of this after his indictment.

10 I would note just a couple of key things. I thought it  
11 was telling that Mr. Levandowski has been a champion without  
12 notoriety for all sorts of equity, and that showed his  
13 character. There were people who talked about his decisions  
14 with respect to gender, with respect to forwarding racial  
15 equity, to trying to help individuals who aren't necessarily  
16 advantaged in this society, and he did that without personal  
17 reward often and without urging from anyone. He is someone  
18 who's helped those who are less fortunate than him.

19 Another very telling anecdote or experience was what he  
20 had done for a young disabled child when -- really, quite  
21 frankly, while he was young. And his brother had indicated  
22 even 25 years later, he's still involved in that individual's  
23 life.

24 To Bill Jackson, another individual who had known him  
25 for years, when he started to do something entrepreneurial, the

1 generosity that Mr. Levandowski showed in helping him get  
2 started, both in his time and financially.

3       There were numerous people who talk about Mr. Levandowski  
4 extending his home and allowing them to come in and stay with  
5 him when they were facing hard times or when they needed a  
6 boost to be able to get things -- a helping hand to get things  
7 started, just telling how open he is, that he would bring  
8 people into his own personal circle to help them in times of  
9 need. So those were some of the things I wanted to highlight.

10       But I also wanted to talk about, at least point the Court  
11 to that he's a family man also. While he is not married, he is  
12 very involved in his kids' life. There's some aspect of the  
13 medical records that we submitted that are under seal; so I'm  
14 not going to speak to those on the record, but I do want to  
15 make the Court aware of that. And those were not only medical  
16 issues with respect to his son, but also with respect to the  
17 mother of his children and the co-parent of his two children  
18 and the sorts of things that he has done and continues to do to  
19 this day to help her in her medical issues, in her recovery.  
20 And numerous people attested to how unique he is as a father  
21 and the care that he shows for the children and in terms of  
22 fostering their development.

23       All of these things went to really demonstrate just his  
24 character as a person and his compassion for people and how he  
25 expresses that over time or has expressed that over time and

1 continues to express that.

2       There are also numerous statements and testimonies with  
3 respect to his work ethic, and that's something that has  
4 continued today and that has been there ever since high school.  
5 Again, coming to the country not speaking English showed the  
6 commitment that he had to work hard, to learn the language, to  
7 immediately excel in school, even when he had the difficulties  
8 of English -- of learning English before him and not speaking  
9 the language in the school that he initially enrolled; then  
10 moving on to University High, excelling. As numerous  
11 individuals pointed out, he was as hard a worker as anyone that  
12 these individuals had seen. And that continued.

13       That continued straight to his time at UC Berkeley, when  
14 his mother suggested that he look into the DARPA Challenge that  
15 really started him on this road to being involved in  
16 self-driving cars. He read about the motorcycle Ghost rider,  
17 and that right now is in the Smithsonian Institution. But even  
18 at a young age in college, when many of us were probably having  
19 more fun than maybe we should have, Mr. Levandowski's fun for  
20 him was attempting to work on this project. It was a  
21 two-year-long project, 16, 18 hours a day. And the success  
22 that he had was rather striking for someone at that age, but  
23 really reflects on his extraordinary work ethic that he's  
24 shown. I think that really does speak to his character.

25       And, again, it's a work ethic that just continued; that,

1 quite frankly, it was relentless. And when he faced a personal  
2 problem with respect to the mother of his children while she  
3 was pregnant, nine months pregnant, having that car accident  
4 that you read about, it fueled a flame, a flame that was  
5 already burning, but it made it a personal mission, not so much  
6 simply from an academic or perspective of trying to solve a  
7 problem; it really brought to light the real issue of the  
8 mission that he's lived his life on, and that is trying to  
9 bring a safer way for cars to operate. And that's something  
10 that has carried on throughout, but it did become in that way  
11 very personal for him. And many people have talked about that.  
12 And he has been tireless in his efforts over the years  
13 continuously working on this problem.

14 And I would note, even after this case, first the civil  
15 case and now the criminal case, it's not deterred  
16 Mr. Levandowski from working on those issues. He continues to  
17 work difficult -- work hard. His hours put into Pronto, coming  
18 up with a completely different type of self-driving car system  
19 that doesn't involve LiDAR, demonstrates that.

20 I could go on about that, but I won't. But I think all  
21 that comes through when you see the letters, the video, the  
22 testimony that really speaks to his character. Sometimes he  
23 has been portrayed, I think, publicly as a sinister character.  
24 I think sometimes these stories can take on a life of their  
25 own. And unfortunately, that happens. He recognizes that.



1 And how he's been portrayed is essentially the poster child for  
2 wrongdoing in Silicon Valley.

3 But I think the whole picture, the true picture is  
4 different than that. And I think that the letters and the  
5 testimony demonstrates that. He is a person of character. He  
6 is a person who did something wrong. And you can tell from his  
7 letter, he fully acknowledges that and he fully regrets it.  
8 He's learned from that.

9 But I would ask this Court, as it should under the 3553(a)  
10 factors, not only to look at that wrongful act, but to look at  
11 his overall history and background and his personal  
12 characteristics.

13 And I think what we've submitted showed clearly that he is  
14 not what he sometimes is portrayed as in the public. He is a  
15 loving father. He is someone who is a caring partner. And he  
16 is someone who helps. He's deeply loyal to friends and helps  
17 even those who he doesn't know, who aren't necessarily friends  
18 but who are less fortunate and who are facing obstacles that he  
19 may not have -- he may not have faced himself. He is someone  
20 who does this because he thinks it's the right thing to do.

21 And I hope the Court will consider that in fashioning the  
22 sentence.

23 And that leads me to the second factor that I'd like to  
24 talk about, Your Honor, and that's deterrence, and fashioning a  
25 sentence that meets the sentencing objective of both specific

1 deterrence and general deterrence.

2 I think with respect to specific deterrence, with respect  
3 to Mr. Levandowski, you don't have to worry about him being in  
4 front of you reoffending. Several individuals in their letters  
5 had discussed the way that he has gone about setting up the  
6 culture at Pronto, his new company, his new self-driving  
7 company. And they are clear that it has been incredibly  
8 professional and has been focused on compliance. And that is a  
9 lesson that he has personally learned, how important that is,  
10 and that's for various reasons.

11 But one thing that I do want to point to is that there  
12 have been significant collateral consequences that have  
13 resulted from this case that will continue to deter him. And  
14 we know about the arbitration award, which has driven an  
15 otherwise wealthy individual into bankruptcy for now, I'm sure.  
16 There is an issue about the indemnification that he's fighting  
17 for. But that is clearly a consequence.

18 There have been numerous negative financial consequences  
19 from this. He's obviously been dragged into a variety -- by  
20 his own doing, but he still has suffered through a variety of  
21 legal proceedings which have created all sort of negative  
22 consequences.

23 His public and professional reputation has been damaged.

24 As I indicated as well, also, Google has obtained a  
25 judgment that has forced an otherwise wealthy individual into

1 bankruptcy.

2 Also, I want to make sure that I don't violate any  
3 confidentiality. We filed the settlement agreement between  
4 Waymo and Uber under seal. And in our pleadings, in our memo,  
5 we pointed to some of the negative consequences that have come  
6 to him as a result of that.

7 So I don't think there is a fear of Mr. Levandowski  
8 reoffending. I believe that the Government would agree with  
9 that. But I think the primary thrust of their argument, at  
10 least in part, has been one of general deterrence and that a  
11 message needs to be sent to those in Silicon Valley. We agree  
12 that general deterrence obviously is an important factor; but,  
13 again, it is the sentence that is sufficient but not greater  
14 than necessary to accomplish that.

15 The collateral consequences that I've talked about I think  
16 will continue to offer general deterrence to others, whether  
17 it's the arbitration award, whether it's the damage to  
18 professional and personal reputation.

19 But I think Mr. Levandowski realizes that he needs to do  
20 more than just that. He can't just sit back and say: Hey,  
21 these things happened to me. He needs to be active and  
22 proactive in getting the message out to those in Silicon Valley  
23 and those who may go work in Silicon Valley and those who may  
24 go work in other industries in other locations and be part of  
25 the engineering and technological revolution.

1           And in that regard, he's uniquely situated to discuss this  
2     issue. Because of the extreme press coverage that's happened  
3     in this case, because of the interest in self-driving car  
4     technology just generally and his notoriety in that area, he's  
5     in a position to reach people and to have people listen to him.  
6     So that is why -- and he can provide, widely, caution about the  
7     perils of what he did and why it was wrong.

8           So that is why we suggested the 200 hours of community  
9     service. But even more importantly, in that 200 hours of  
10    community service, we think it would make sense for the Court  
11    to order Mr. Levandowski to do at least 12 sessions in which he  
12    speaks about this case and the lessons he's learned and trying  
13    to deter others from doing that. We'd like it to be across a  
14    variety of platforms and to different people, to try to reach  
15    as many people as possible. So what we're suggesting is 12  
16    different sessions.

17          Obviously, because of the pandemic, it may be that these  
18    need to be all online, which there's an advantage and a  
19    disadvantage to that. The advantage is it can reach more  
20    people more readily. The disadvantage is it may not be as  
21    onerous on him to do. But I think when you're talking about  
22    general deterrence, the most important thing is that he reach  
23    the most amount of people.

24          Mr. Levandowski talked about this. We think people --  
25    engineers who are currently practicing, particularly in Silicon

1 Valley, we think an effective way to do this would, for  
2 example, to be doing a Reddit talk, which potentially could  
3 reach thousands, if not tens of thousands, of individuals.

4 He could also reach out to universities and speak to  
5 students. As you know, lecturers and professors at  
6 universities are always looking for someone like  
7 Mr. Levandowski to come speak. I know myself and Ms. Craig  
8 have, in the past, specifically. But for him to go to  
9 engineering schools and to teach those, either in Zoom classes  
10 or in a Zoom form or, if possible, to do it in person, could  
11 really make an impact on a whole 'nother next generation of  
12 engineers.

13 So what we have tried to do is fashion some sort of  
14 community service that will address this issue, and we've  
15 fallen down on 12 sessions, leaving it a little open to combine  
16 online and in-person, if possible, and also to combine with  
17 current engineers and engineering students.

18 I think it might also make sense to spread that out over  
19 the course of 12 months so it's not just everything done in a  
20 week or in a day, but knowing that that message is continuing  
21 to be out there and that there's a steady drumbeat of that. If  
22 he was to be doing that once a month, 12 times, for a year, we  
23 think that would be very effective in helping to deter other  
24 people. We think that would be as strong as anything to  
25 combine with the other consequences that he's suffered,

1 including the collateral consequences.

2 And then, with respect to the sentence this Court is  
3 imposing, we are recommending a greater fine than is actually  
4 being recommended by either the Government or by the probation  
5 officer. We have recommended -- the guidelines range for fines  
6 tops out at 95,000. I believe that the probation officer has  
7 recommended \$40,000. We are recommending that, with respect to  
8 that, you go to the top end, Your Honor, and that there be a  
9 \$95,000 maximum guidelines fine. We think that those things  
10 combined will address the -- are sufficient to address the  
11 issue of general deterrence.

12 I do want to speak briefly to sentencing disparities,  
13 which I think also touches on the nature of the offense here.

14 In no way does Mr. Levandowski want to minimize his  
15 conduct, but we do want to put it into context. We think that  
16 it's important to recognize the fact here that there was no use  
17 of trade secret or proprietary information that was found at  
18 Uber. Clearly, he had criminal intent when he took the  
19 Chauffeur weekly document. But the evidence bears out that,  
20 fortunately, there was no use of it at Ottomotto or at Uber,  
21 despite two years of investigations by the U.S. Attorney's  
22 Office and then inspection by an army of lawyers and experts  
23 involved in the *Waymo versus Uber* trial. There was no evidence  
24 that any of this information, trade secret or proprietary, was  
25 used in the Uber or Otto programs, and there was simply no

1 evidence that it worked its way onto Uber servers. And it's  
2 worth noting that the Government does not allege that sort of  
3 use in the Indictment here.

4 So I understood that there's been some speculation about  
5 whether he would have -- would have used it or whether he might  
6 have. Some could imagine he used it during negotiating or  
7 talking to Uber in the negotiations about the acquisition of  
8 Uber. But for sentencing purposes, obviously, we should stay  
9 on the factual record. And the factual record is that with  
10 respect to trying to duplicate what was happening at Google at  
11 Uber, there's no evidence. There's no evidence that that  
12 happened, that there was use of that. So that puts that into  
13 context.

14 And with respect to -- there are numerous examples of  
15 sentences in trade secret theft cases -- and we've pointed  
16 the Court to some of them. And I know they're not always  
17 perfect analogies, but it is useful still to have some sense of  
18 the type of sentences that have been applied in this area.

19 And we pointed you to the cases of *Murphy*, *West*, and  
20 *Zhang*, all Northern District cases, where there was no use or  
21 limited use of a trade secret that was taken. And in each of  
22 those cases, there were combinations of probation or supervised  
23 release sentences combined with some amount of electric  
24 monitoring or home confinement. With respect to those cases,  
25 one was six months; the other, ten months; the other one, six

1 months of location or electronic monitoring.

2 We actually think here, the 12 months of home confinement,  
3 we actually think it would make sense to combine that with  
4 location --

5 **THE COURT:** Are you saying that no one has ever gone  
6 to prison in our district for theft of trade secrets?

7 **MR. RAMSEY:** No, I'm not saying that at all. I'm  
8 just --

9 **THE COURT:** That's what it sounds like.

10 **MR. RAMSEY:** No, I'm not -- I'm not saying that.

11 And I'm trying to say we --

12 **THE COURT:** And you say -- well, there's a difference  
13 between the Government not having evidence that it was used  
14 because it's kind of hard after the fact.

15 He had it in his possession.

16 **MR. RAMSEY:** Absolutely.

17 **THE COURT:** He had it in his possession, and he could  
18 have looked at it at any time.

19 **MR. RAMSEY:** Yes, Your Honor.

20 **THE COURT:** We don't know whether he looked at it or  
21 not.

22 **MR. RAMSEY:** Yes, that is correct, Your Honor.

23 **THE COURT:** So he had the opportunity. He certainly  
24 had a motive to look at it. And because the Government can't  
25 prove it, you want me to go easy? I don't know. I don't get



1 that argument. I think you're stretching a point.

2 Now, it probably is true that the Uber design was going to  
3 be different enough from the Waymo design that much of what was  
4 in those files turned out not to be too relevant. That, I  
5 would grant you.

6 But there was still material in those files and in  
7 Number 33 that would be very useful for a competitor to know.

8 **MR. RAMSEY:** Yes, Your Honor. And he indicated that  
9 he did have intent to convert that for the benefit of himself.  
10 He did provide a snapshot.

11 One of the things that the Government has pointed out in  
12 their memo is talking about, one, it could be useful in  
13 negotiating time for -- negotiating milestones, such as  
14 the Government posits. That's possible.

15 The other thing, it would clearly be useful in  
16 understanding the state of the industry and the state of where  
17 a competitor was and what they were doing when they made the  
18 rolling A --

19 **THE COURT:** Well, it's having the game plan.

20 **MR. RAMSEY:** Yes.

21 **THE COURT:** It's having the competitor's game plan.  
22 Any football coach in America would love that. So I don't --  
23 to me --

24 **MR. RAMSEY:** And also understanding different parts  
25 of -- parts of the -- that exact value, but understanding what

1 the time frame was. It absolutely would be useful. That is  
2 part of the intent.

3 But not trying to minimize, again, Your Honor, and so I  
4 don't want you to say we're asking you to go lenient because of  
5 that. What I'm trying to do is at least just put it into  
6 context and try to give some reference to some of the  
7 distinctions that we saw with respect to different sentences.

8 But he understands that what he did was wrong a  
9 hundred percent, and that would be part of what he'd be  
10 talk- -- hopefully will be talking to individuals and engineers  
11 about.

12 But at least -- I'm just at least trying to put it in  
13 context. And the type of sentences that we have seen in the  
14 district, there have been some lengthy sentences. Those  
15 sentences that we've seen tend to have to do with economic  
16 espionage on behalf of a foreign power.

17 So we're trying to put it in that context, but I think --  
18 I don't want you to think at all that he is stepping away from,  
19 you know, his criminal intent and that he did something wrong.  
20 I think his letter makes that very clear.

21 And just in trying to address this particular factor, I'm  
22 trying to put it in context. But it's not at all that we don't  
23 think what he did was not serious and that the Court should  
24 not -- should be going light and not looking at what the actual  
25 3553(a) factors are and how a sentence can be fashioned to

1 accomplish those.

2 I think the Court started, before we talked, about trying  
3 to institute -- I think you described it as the lowest  
4 sentence --

5 (Stenographer interrupts for clarification of the record.)

6 **MR. RAMSEY:** -- that institutes the lowest sentence  
7 that accomplishes those objectives.

8 I've talked about it in the statutory language of  
9 sufficient but not greater than necessary.

10 And that's what we're trying to do, Your Honor, is to give  
11 that context, but I don't at all want you to think --

12 **THE COURT:** That's exactly what I'm trying to do too.  
13 I think you put your finger on the standard.

14 The question is -- the key question here is deterrence and  
15 whether someone in the future, who is in Mr. Levandowski's  
16 position, with billions -- not just millions -- billions of  
17 dollars in some new technology are in play, and that person in  
18 the future, that engineer in the future, who, let's say, is  
19 brilliant, has the opportunity to go start their own company  
20 and they're thinking to themselves: "Do I steal these trade  
21 secrets so it'll give me a heads-up? Maybe I won't get  
22 caught" -- so they're factoring in the risk of detection --  
23 "and if I do get caught, well, they'll just give me probation  
24 like they gave Mr. Levandowski."

25 So that's the problem you have with your argument. You're

1 inviting -- you're giving a green light to every future  
2 brilliant engineer to steal trade secrets when billions of  
3 dollars are on the line. That's the problem I have.

4 **MR. RAMSEY:** Yes, Your Honor. And I --

5 **THE COURT:** Prison time is the answer to that.

6 **MR. RAMSEY:** Well, one thing I did want to talk about  
7 later on, and that I have to talk about, is the time that we're  
8 in and the unique impact that that might have on  
9 Mr. Levandowski with respect to COVID-19 and the coronavirus.

10 **THE COURT:** Okay. Make your point there on COVID-19.

11 Look, people can't just be let -- I can postpone prison  
12 time until COVID-19 goes away. That, we can do.

13 But somebody who deserves prison time ought to get prison  
14 time, unless it's going to just be a matter of a couple of  
15 months, then maybe I let it go. But I don't know.

16 **MR. RAMSEY:** And --

17 **THE COURT:** Can we do this before we get to the  
18 COVID-19 thing? Is that what you have left to go through?

19 **MR. RAMSEY:** That's primarily --

20 **THE COURT:** I want to give Ms. Wawrzyniak a chance to  
21 make her argument. Then I'll give you a chance to, because you  
22 covered a lot of ground here, and I think it'd be good to have  
23 her respond on the merits to that. Then I'll give you another  
24 round to --

25 \\\

1 (Discussion off the record between the law clerk and the  
2 Court.)

3 **THE COURT:** Okay. I'm going to come --

4 **MR. RAMSEY:** Yes, Your Honor.

5 **THE COURT:** -- back to you.

6 **MR. RAMSEY:** The two areas we have left is COVID-19  
7 and restitution as well.

8 **THE COURT:** And what?

9 **MR. RAMSEY:** Restitution.

10 **THE COURT:** Restitution. Okay. We'll come back to  
11 those. All right.

12 **MS. WAWRZYNIAK:** Thank you, Your Honor.

13 **THE COURT:** Let me just say, Ms. Wawrzyniak, don't you  
14 agree -- I want to say a few things because even though I was  
15 jumping on Mr. Ramsey, he has made some good points.

16 And I'm going to make one that he hasn't made, which is  
17 that we're talking about a brilliant engineer. We're not  
18 talking about some ordinary engineer. Mr. Levandowski is a  
19 brilliant, groundbreaking engineer that our country needs. We  
20 need -- engineers are great. I respect them. But we  
21 particularly need those people with vision, and so I'm going to  
22 give him that.

23 He's also, up to this point, had a flawless record, and he  
24 seems to be a good person.

25 All of those things work to his advantage. So you ought

1 to address those points too.

2 Go ahead.

3 **MS. WAWRZYNIAK:** Thank you, Your Honor.

4 I want to start, first, by kind of refocusing on the  
5 offense conduct here. In Mr. Ramsey's remark, I think you  
6 could lose sight of the fact that we are here today because  
7 Anthony Levandowski stole over 14,000 files from Google as he  
8 prepared to depart the company.

9 At the time he took those 14,000-plus files, he was  
10 already deep into secret negotiations with Uber. And the  
11 14,000-plus files that he took would undoubtedly have been  
12 useful to him, first as he negotiated with Uber and then if he  
13 launched his own company, Ottomotto.

14 The defendant doesn't want the Court to focus on those key  
15 inarguable facts. Instead, it's to his advantage to obscure  
16 the full scope of his criminal conduct and to distract  
17 the Court with other issues, issues of the day.

18 This very Court saw defendant's conduct for what it was  
19 back in 2017, writing (reading):

20 "It would strain credulity to imagine that  
21 Levandowski plundered Waymo's vault the way he did  
22 with no intent to make use of the downloaded trove."

23 You were so troubled by Mr. Levandowski's conduct that you  
24 referred the matter to my office for investigation.

25 The chronology that the Court sketched out way back in

1 2017 essentially proved to be correct. There's the  
2 negotiations with Uber that begin in the summer. They  
3 intensify in December. The talks turn to acquisition. And  
4 it's right in that period of time that Mr. Levandowski  
5 downloads everything from SVN, and he also takes these other  
6 critical business documents from the Google Drive before he  
7 abruptly resigns from Google at the end of January.

8 The key dates and events which are laid out in my  
9 sentencing memo, they track through numerous court records and  
10 multiple court proceedings. They're in Your Honor's orders  
11 from the civil case. They're in the JAMS arbitration award.  
12 They're in the plea agreement, and they ended up in the PSR.

13 And as for whether defendant used the documents he stole,  
14 I think the Court hit the nail right on the head a few minutes  
15 ago. We're never going to know for sure, for the majority of  
16 the documents, whether and how the defendant used them. It's  
17 true that he did not succeed in replicating Waymo's technology  
18 at Uber, but he may well have consulted the files when he was  
19 home; he may have consulted them before he provided input at  
20 meetings, before he drew on a whiteboard, before he gave  
21 guidance to his team when they were troubleshooting issues.

22 **THE COURT:** Ms. Wawrzyniak, since I let Mr. -- I know  
23 you don't have your face shield here; but if you want to remove  
24 your mask -- it seems to be slipping down at times -- I'll let  
25 you do that.

1 Is that okay with everybody?

2 **MR. RAMSEY:** Yeah. I believe she has a face shield as  
3 well.

4 **THE COURT:** Right.

5 **MS. WAWRZYNIAK:** Yeah. I can put --

6 **THE COURT:** You can use it or not, if you wish.

7 **MS. WAWRZYNIAK:** If you don't mind, Your Honor, this  
8 is easier. I do have trouble talking through the mask.

9 I wanted to point out that we know for sure that with  
10 Trade Secret 33, the document that he has pled guilty to,  
11 Count 33, he last looked at that document on February 24th,  
12 2016, which is almost a month after he resigned from Google.  
13 So the Government disagrees that this is a case where the  
14 defendant did not use the trade secrets that were stolen.

15 Now, the Government did agree to resolve this case based  
16 on a guilty plea to one count, and that meant that the  
17 defendant was only required to admit that one of the documents  
18 he stole was a trade secret. But just because the defendant  
19 didn't admit that any of the other 14,000-plus documents were  
20 trade secrets doesn't mean that those documents are somehow  
21 irrelevant or disappear from the case. In fact, the sentencing  
22 guidelines, particularly Chapter 1, counsel just the opposite.  
23 The Court is supposed to look at the full scope of relevant  
24 conduct. There's no limit under the statute as to what  
25 the Court can consider at sentencing.



1 And the Government certainly didn't agree in the plea  
2 agreement to put some sanitized version of the facts in front  
3 of the Court for sentencing. And I submit to you that that's  
4 what the defendant is trying to do.

5 It was noted in the PSR and also in my sentencing memo  
6 that the defendant wanted to excise from the PSR about seven  
7 paragraphs, paragraphs 13 to 20. Those are paragraphs that  
8 contain uncontroverted facts about the defendant's intense  
9 negotiations with Uber at the end of 2015, beginning of 2016.  
10 Now, ultimately, he dropped that objection. Those paragraphs  
11 are in the PSR. But that goes to show you the way that he was  
12 trying to curate the information that's in front of the Court  
13 today.

14 And moreover, if you read the sentencing materials as a  
15 whole, they're written very much to suggest that  
16 Mr. Levandowski took one lone document, and that's just simply  
17 not correct.

18 So my first ask here today is that we not lose sight of  
19 the full scope of what the defendant did. This was a brazen  
20 theft, and it still shocks the conscience today.

21 I'm going to turn now to an argument that Mr. Ramsey made  
22 about, in essence, the collateral consequences, this idea that  
23 Mr. Levandowski has already been punished enough. He says that  
24 he's been punished financially and reputationally, and I want  
25 to take on each of those arguments.

1 First, financially. It is not at all clear that this  
2 defendant is going to pay the \$179 million arbitration award.  
3 As this Court will recall, in connection with the acquisition  
4 of Ottomotto, Uber promised to indemnify Mr. Levandowski to,  
5 quote, the maximum extent permitted by law. The agreement and  
6 plan of merger contained an indemnification section, and then  
7 there was a separate indemnification agreement that was entered  
8 into in April of 2016.

9 Now, in the pending bankruptcy proceeding, which is  
10 pending here in this district, Mr. Levandowski has filed a  
11 complaint seeking to enforce the indemnification agreement.  
12 It's Document 147 in the bankruptcy case, and it was just filed  
13 last month on July 16th. In that complaint, Mr. Levandowski  
14 alleges that he sought indemnification and that Mr. Kalanick,  
15 then the CEO of Uber, promised it to him.

16 In the complaint, Mr. Levandowski makes it sound like he  
17 sought indemnity because he feared that Google was going to sue  
18 him out of some sort of vengeance or revenge for leaving. But  
19 I submit to you that an equally plausible inference is that the  
20 reason that this defendant sought indemnity from Uber is  
21 because he knew at the time that he was doing that acquisition  
22 that he had stolen trade secrets.

23 Now, Uber is contesting its obligation to pay the  
24 \$179 million. Their response to the complaint is due later  
25 this month, on August 17th. However, in its public filings,

1 including 10-Qs and 10-Ks, Uber has said that it may be liable  
2 for the entire arbitration award.

3 The defendant's sentencing papers leave out this issue of  
4 indemnity completely. We just made a minor change to the PSR,  
5 noting that the indemnification claim is worth \$170 million.  
6 The defendant has given you the false impression that he's  
7 already been financially ruined by the facts of this case; but,  
8 in fact, he has not paid any of the \$179 million award. Google  
9 is still waiting to collect on it. And, in fact, as reflected  
10 in the PSR, his net worth is over \$60 million today. So the  
11 narrative that this defendant has already lost all of his vast  
12 fortune is just not true. It's false.

13 In his papers -- I'm going to turn now to the reputational  
14 harm argument -- the defendant bemoans his treatment by his  
15 former employers and the press, and he talks specifically about  
16 losing his job and being branded a notorious trade secret thief  
17 in the media. He urges this Court to consider these collateral  
18 consequences in fashioning the sentence.

19 This collateral consequences argument is not something  
20 that's available to most defendants, and I would urge the Court  
21 to discount it. To see why this argument is problematic we  
22 really need to unpack it.

23 First, this argument comes from a place of extreme  
24 privilege. Yes, Mr. Levandowski has fallen from grace, but  
25 that necessarily means he was on a pedestal to begin with. As

1 Your Honor just said, this is someone who is a brilliant  
2 engineer. No one's disputing that he has a very unique mind.  
3 In his own words, he was a pioneer in this field and a star  
4 engineer. He earned \$120 million in bonuses from Google.

5 He was in the unique position of basically playing two  
6 tech titans off one another: Google on the one hand, Uber on  
7 the other. Given that profile, of course there has been public  
8 interest in this case. His elite status in the industry is  
9 what makes his conduct all the more shocking and inexplicable.

10 Most defendants that come before this Court for sentencing  
11 don't have a fraction of the resources or opportunities that  
12 Mr. Levandowski had. Many, many crimes are committed against  
13 the backdrop of difficult circumstances and limited resources.  
14 The law doesn't forgive crime in those instances. And if  
15 anything, we should judge a defendant more harshly when the  
16 crime is entirely gratuitous and motivated by ego or by greed.

17 Second, this collateral consequences argument is an  
18 invitation to give white collar defendants a structural break  
19 that other defendants just don't get. In effect,  
20 Mr. Levandowski is asking this Court to give him a break  
21 because he was famous, because he was wealthy, because he's  
22 exceptional. And nothing in the Code or in the guidelines  
23 supports that.

24 And third and relatedly, this argument centers the  
25 defendant. It puts a myopic focus on the defendant at

1 sentencing and pushes to the side the experiences of all the  
2 people who were negatively impacted by his behavior. There's  
3 the employer that he betrayed, the other engineers whose work  
4 he stole, and the people who had faith in him and followed him  
5 from one company to the next.

6 The bottom line is that focusing on adverse collateral  
7 consequences to white collar defendants and then using those  
8 collateral consequences to justify a more lenient sentence  
9 gives wealthy, well-educated defendants a leg up on other  
10 defendants. There shouldn't be two systems of justice in this  
11 country, one for the well-to-do and one for everyone else.  
12 Anyone who commits a federal felony should face criminal  
13 punishment above and beyond social sanction.

14 The sentence that defendant is requesting amounts to  
15 having to stay in his million dollar home with ocean views for  
16 12 months and paying about \$850,000. That is not justice.

17 And as Your Honor has already sort of indicated, if that's  
18 the sentence here today, the message that's going to  
19 reverberate throughout the Valley is that you can calculate, in  
20 dollars and cents, the cost of stealing trade secrets. And  
21 that's dangerous, because once people can quantify that cost,  
22 they're going to do just what Your Honor said, which is to  
23 discount it by the probability that you get caught, discount it  
24 by the risk of detection.

25 Entrepreneurs are constantly balancing risk versus reward,

1 and if there's no jail time here, some entrepreneurs are  
2 definitely going to decide that the potential upside of  
3 stealing trade secrets is worth it.

4 And so for those reasons, the Court is urging this  
5 Court -- the Government is urging this Court to hand down a  
6 sentence that's commensurate with the conduct and that's going  
7 to deter others from committing similar crimes.

8 **THE COURT:** And your recommendation is 27 months;  
9 correct?

10 **MS. WAWRZYNIAK:** It is, Your Honor. That's the middle  
11 of the guidelines range, and we think that that's fair, given  
12 the conduct, and that it would also stack up to other trade  
13 secret sentences.

14 **THE COURT:** What do you say about the disparate --  
15 Mr. Ramsey pointed to a number of trade secret cases where the  
16 defendant got home confinement or probation. So what do you  
17 say to that?

18 **MS. WAWRZYNIAK:** Well, I think that the conduct here  
19 did shock the conscience. It was a lot of files. It's a very  
20 high-profile case. And a sentence of 27 months pales in  
21 comparison to some of the other sentences in the cases that  
22 involve foreign espionage, as Mr. Ramsey alluded to. There are  
23 defendants in this district who have gotten 120-month sentences  
24 for theft of trade secrets. And so the sentence that we're  
25 recommending is somewhere in the middle of the scale.

1           **THE COURT:** Are there defendants in our district who  
2 are not espionage -- foreign espionage cases but, like,  
3 domestic theft of trade secret cases where they have gotten  
4 jail time?

5           **MS. WAWRZYNIAK:** Yes, Your Honor. One example that  
6 comes to mind is the *Nosal* case, N-o-s-a-l. I believe the  
7 sentence there was 12 months and a day. That was a domestic  
8 espionage case. And the documents that were at issue there  
9 were recruiting lists, contact information, nothing technical.

10          **THE COURT:** Okay. All right. Let me ask you a  
11 different question before we go back to Mr. Ramsey on COVID-19.

12          If the Court were to impose a prison sentence, does  
13 the Court have the discretion to postpone the report date, the  
14 surrender date, until such time as the COVID-19 threat has  
15 passed?

16          **MS. WAWRZYNIAK:** Yes, absolutely, Your Honor. I think  
17 that Judge Seeborg has done something similar recently.

18          I do have an argument on the specific COVID-19 issue  
19 that's been raised.

20          **THE COURT:** We'll come back to it, but I just wanted  
21 you to answer that question first.

22          **MS. WAWRZYNIAK:** Yes, Your Honor.

23          **THE COURT:** Mr. Ramsey, we'll come back to you now.  
24 And you had two remaining points you wanted to make.

25          **MR. RAMSEY:** Yes, Your Honor. I have at least a

1 couple of other things to address.

2 **THE COURT:** In the interest of fairness, since your  
3 opponent didn't use a mask or a head shield, if you would like  
4 to take yours off -- it's up to you. You're doing fine as you  
5 are, but I'll give you the option.

6 **MR. RAMSEY:** I'll take it off, Your Honor. As I'm --  
7 being diabetic, I try to be -- create a safe --

8 **THE COURT:** All right. Very good. Thank you.

9 **MR. RAMSEY:** Thank you, Your Honor.

10 There's just a couple of points that I want to address  
11 before I jump into the COVID.

12 At least because we just were talking about sentencing  
13 disparities and *Nosal*, I just want --

14 (Stenographer interrupts for clarification of the record.)

15 **MR. RAMSEY:** Yeah. Seeing how we were talking about  
16 sentencing disparities and specifically with respect to the  
17 case *Nosal*, which, first of all, was not only for trade secret  
18 theft; it was after a trial. There were six counts of  
19 conspiracy, trade secret theft, and unauthorized computer  
20 access. I also believe that there was use of the database that  
21 was stolen from the recruiting service. And in that case,  
22 pre-pandemic, he was sentenced to 12 months and a day.

23 I do think the Court hit upon something, which there is  
24 the distinction in past sentences between non-espionage cases  
25 and espionage cases. The 120-month sentence that



1 Ms. Wawrzyniak was referring to is the *Walter Liew* case, where  
2 there was a fairly brazen theft of technology from DuPont being  
3 transferred to the Chinese government. And, again, there was  
4 use there as well. So I think there is that -- this  
5 distinction between non-espionage cases and use and non-use.

6 And, again, I want to make clear, Your Honor, we're not  
7 asking that nothing happen here. The 12 months, we are asking  
8 for it to be in home confinement and electronic monitoring, and  
9 that will move me into the COVID-19 argument.

10 This is a situation where the Attorney General has put out  
11 guidelines about where alternative sentences should be  
12 considered, which we pointed you to from the Department of  
13 Justice itself. And it said when they're non-violent offenders  
14 who suffer from co-morbidities that may make them more likely  
15 to suffer negative consequences from COVID-19, alternative  
16 sentences should be considered.

17 Mr. Levandowski is an individual who has had repeated  
18 respiratory issues, which the CDC has addressed as making it  
19 likely that you will have more severe symptoms. And he twice  
20 had pneumonia, in 2015 and 2017. We provided the medical  
21 records.

22 Also we --

23 **THE COURT:** Can I interrupt you one second?

24 **MR. RAMSEY:** Yes.

25 **THE COURT:** Someone is on the telephone, typing away,

1 some reporter probably, who has got -- is unmuted, is typing  
2 away. Or I don't know who it is. It could be a lawyer.

3 Anyway, you can't do that to us. We hear every click here  
4 in the courtroom. And if this continues, I'm going to direct  
5 the clerk to terminate the telephone line so that none of you  
6 will be able to hear.

7 So, I'm sorry, Mr. Ramsey, for that, but I want to hear  
8 every word you say, and somebody on the line is disturbing us.  
9 All right. Please, go ahead.

10 **MR. RAMSEY:** Thank you. I appreciate that,  
11 Your Honor.

12 And Mr. Levandowski does have a history of respiratory  
13 illness that's set forth in the medical records and in the  
14 cover letter from his primary-care physician. So he is a  
15 high-risk individual, and I think the Court can consider that.

16 And unfortunately, the BOP has -- as many places in this  
17 country, has not been able to get a full grasp on the COVID-19  
18 problem.

19 **THE COURT:** But the time is going to come when it'll  
20 be -- the pandemic will be over. And we can postpone the  
21 prison time until it's safe to go into prison. So I can do  
22 that.

23 **UNIDENTIFIED SPEAKER:** Don't leave it hanging over  
24 him.

25 **THE COURT:** I'm sorry. Somebody is talking on the

1 phone again.

2 So, go ahead. Finish. You had another point about  
3 restitution.

4 **MR. RAMSEY:** Yes, Your Honor.

5 And so -- well, and then also I want to at least -- just  
6 so the Court -- just very quickly on the COVID-19 is also the  
7 effects of him as a co-parent with respect to his wife and his  
8 child. But I will -- I think the Court understands all of  
9 those arguments.

10 **THE COURT:** I read all of that.

11 **MR. RAMSEY:** Yeah.

12 And with respect to restitution, he is prepared to pay the  
13 restitution. Your Honor, we did bring a check today. He's  
14 deposited in escrow with our law firm, which the Court is  
15 aware, a -- the funds to meet what the parties have and Waymo  
16 has agreed to for proper restitution.

17 The one thing I would point out, just so the Court knows,  
18 the Court gave us an order that we could pay -- lodge the  
19 restitution with the Court. We have not yet done that, and I  
20 just want to let the Court know why. Because of the bankruptcy  
21 proceeding, Mr. Levandowski's bankruptcy counsel has informed  
22 us that we need to get a comfort order, an order from the  
23 Bankruptcy Court, making sure that it's acceptable for us, who  
24 has the money in escrow, to deposit that money. There have  
25 been filings made in the Bankruptcy Court, and that will be

1 heard on the 13th of this month. That's the only reason we  
2 have not yet deposited.

3 **THE COURT:** Well, you're just holding up the check  
4 like it's in the mail, but it hasn't been paid.

5 **MR. RAMSEY:** No, it hasn't. And I wanted to let  
6 the Court know, we're prepared.

7 **THE COURT:** Prepared when?

8 **MR. RAMSEY:** We just don't --

9 **THE COURT:** When is it going to be paid?

10 **MR. RAMSEY:** We don't want to violate a court order.  
11 So --

12 **THE COURT:** When is it going to be paid?

13 **MR. RAMSEY:** Immediately when -- if you tell us to do  
14 it, we'll do it now. But we don't want to violate the  
15 bankruptcy's automatic stay.

16 **THE COURT:** I'll order that now.

17 **MR. RAMSEY:** You'll order that now. We will --

18 **THE COURT:** I'll order it now. You go to the Clerk's  
19 Office after this hearing, pay that money, and tell the  
20 bankruptcy judge that's what I said.

21 **MR. RAMSEY:** Absolutely, Your Honor.

22 **THE COURT:** There should be no delay on that.

23 **MR. RAMSEY:** All right. So I can sign that myself.  
24 I'll give that to Mr. Ehrlich. It's addressed to the Clerk of  
25 the United States District Court. And we've got 30 minutes to

1 get it there; so we will do that.

2 **THE COURT:** Well, we may not be done in 30 minutes. I  
3 don't know.

4 **MR. RAMSEY:** We'll get it first thing tomorrow  
5 morning.

6 **THE COURT:** All right.

7 **MR. RAMSEY:** First thing in the morning.

8 So thank you, Your Honor. So the restitution will be paid  
9 tomorrow or later today --

10 **THE COURT:** That's fine.

11 **MR. RAMSEY:** -- if possible.

12 I did want to point out, you did point out that  
13 Mr. Levandowski does have much to offer, both to society and  
14 Silicon Valley.

15 **THE COURT:** No question. I totally agree. He's a  
16 brilliant man, and the world would learn a lot by listening to  
17 him.

18 **MR. RAMSEY:** And I did want to bring your attention,  
19 Your Honor, to the one letter that was under seal from --

20 **THE COURT:** There have been about 45 letters. So  
21 which one are you talking about?

22 **MR. RAMSEY:** This is specific from Mr. Taylor.

23 **THE COURT:** What does it say?

24 **MR. RAMSEY:** It's under seal; so I wanted to be  
25 careful not to --

1           **THE COURT:** Tell me what it said.

2           **MR. RAMSEY:** It talks about the usefulness that  
3 Mr. Levandowski can be to our government and some of the  
4 efforts that have been made in that respect, both present and  
5 future. I'm happy to hand this up.

6           **THE COURT:** If you want, you can hand it up. I don't  
7 remember that letter.

8           **MR. RAMSEY:** I have this two-sided. So if you just  
9 ignore the back side of this, you will see the front and the  
10 back.

11          **THE COURT:** Has the Government seen this?

12          **MS. WAWRZYNIAK:** Yes, Your Honor.

13                   (Document handed up to the Court.)

14          **THE COURT:** Okay. I've read it, and I'm going to hand  
15 it back to you.

16                   (Document handed down.)

17          **MR. RAMSEY:** Thank you, Your Honor.

18           And just two other things that I wanted to talk about just  
19 briefly, briefly about collateral consequences and then also  
20 briefly about the offense conduct.

21           Excuse me, Your Honor.

22           We clearly are not trying to mislead the Court in any way.  
23 We talked about the indemnification claim. There's no  
24 certainty. All of that has been put forward in the bankruptcy  
25 court. But that's a real possibility that there may or may not

1 be an indemnification claim.

2 There is an arbitration award which is final and which has  
3 been then upheld by the Superior Court, and that arbitration  
4 award is for \$180 million.

5 **THE COURT:** Well, isn't he living right now in some  
6 fancy home overlooking the ocean?

7 **MR. RAMSEY:** He's renting a two-bedroom one-story  
8 house. It is clearly in a nice location.

9 If you look at the description in the PSR --

10 **THE COURT:** Well, people who are bankrupt are usually  
11 not like that. You're making him sound poor and destitute. I  
12 don't believe that.

13 **MR. RAMSEY:** Your Honor --

14 **THE COURT:** I believe he's on the verge of hundreds of  
15 millions of dollars, and he's just in a bad patch right now.  
16 But he is -- he's had hundreds of millions recently and will in  
17 the future. And I don't believe that he's destitute.

18 **MR. RAMSEY:** One thing I will point out to you,  
19 Your Honor, is he is -- and this is just clear across the  
20 board. Everyone has indicated this in the letters. He is not  
21 someone who has lived an ostentatious life or -- or lived in  
22 extravagance.

23 The places that he's lived at up until this of just a year  
24 or two was literally a two-bedroom duplex in Rockridge. He  
25 drove -- when we met him, he drove a 1994 beat-up Lexus, which

1 you can see, with 140,000 miles on it.

2 That being true, he right now, with his fiancée, is living  
3 in a nice area in Marin County, but it is not a mansion. It is  
4 a two-bedroom house for he, himself, and his two children live  
5 there as well, and it has a room for an office and a living  
6 room, as been described in the PSR. So it is not an  
7 extravagant living situation where --

8 **THE COURT:** Home confinement in such a location would  
9 be pretty nice, wouldn't it?

10 **MR. RAMSEY:** Well, we could always change that, if we  
11 had to.

12 Part of the aspect of home confinement is also to allow  
13 him to help with his children --

14 **THE COURT:** Yes, I get that part.

15 **MR. RAMSEY:** -- who have somewhat unique situations.

16 But that's, again, a two-bedroom house with two children.  
17 And I'm not saying that it's not --

18 **THE COURT:** Your partner just brought up a note; so  
19 you must have another point to make.

20 **MR. RAMSEY:** That had to do with the collateral  
21 consequences.

22 And in addition to, obviously, restitution fees, the  
23 settlement agreement that also is under seal has some  
24 provisions that are very unique to him which provides for some  
25 blackballing in the industry.



1 And so those are other significant consequences and things  
2 that, in an appropriate way, not violating any  
3 confidentiality -- and perhaps the Court may find that -- we  
4 placed it under seal in an abundance of caution because it had  
5 been marked by the Government as "Confidential" with respect to  
6 the settlement agreement. It may be that the Court doesn't  
7 find that the settlement agreement really has any proper basis  
8 for confidentiality and that it shouldn't be under seal and  
9 that it should be open to the public.

10 But that, again, could be part of the discussions, the  
11 speaking engagements that he could have with engineers  
12 throughout to make sure that they understand that strong  
13 consequence in your prospects moving forward, that is also a  
14 strong deterrent beyond -- beyond simply probation.

15 He is a felon, et cetera, but I won't belabor that.

16 I do want to move on to the offense conduct, unless  
17 the Court has specific questions about that, Your Honor.

18 **THE COURT:** Well, are you done?

19 **MR. RAMSEY:** No.

20 **THE COURT:** What do you mean, offense conduct? We've  
21 heard about it. You already covered that.

22 **MR. RAMSEY:** Well, the one thing I did want to talk  
23 about is because we talked about these 14,000 files and why he  
24 downloaded those.

25 We agree that he downloaded the 14,000 files, but there

1 are factual disagreements about his intent. The timing on when  
2 he downloaded those files were -- there was -- it was at a time  
3 where he was having meetings regarding the Chauffeur Weekly.

4 We agreed on the Chauffeur Weekly, the use that he could  
5 have with those, particularly keeping -- having certain files  
6 that were there later on.

7 But there are real factual disagreements about that in the  
8 timing. That is a month apart. We think we should be --  
9 that what we have tried to talk about is the intent on the --  
10 where there aren't these factual disagreements. And there are  
11 different inferences, discussions on different ways about those  
12 purposes. But we do believe that there are real factual  
13 disagreements there.

14 All of that, again, is not to minimize or justify what he  
15 did. He is pleading guilty. He realizes what he did was  
16 wrong. He will be a felon forever. But we do think it puts it  
17 in context.

18 **THE COURT:** Okay.

19 **MR. RAMSEY:** So with all of that, not greater than  
20 necessary -- sufficient but not greater than necessary, we  
21 think that you do need to look at things such as his personal  
22 background, which you've pointed out, and a variety of other  
23 factors.

24 He does have much to give to society. He has much to give  
25 to government. He has much to give in terms of deterring

1 others from doing this.

2 And this is a unique time in terms of COVID. And we  
3 believe that a year, which is -- Nosal was a year and a day  
4 with more than just trade secret theft, with use and a full  
5 trial -- we believe that this would be an appropriate sentence.

6 **THE COURT:** Thank you.

7 Ms. Wawrzyniak, on the subjects just covered, not  
8 everything, not the general issue anymore, but just material  
9 that's been covered by Mr. Ramsey.

10 **MS. WAWRZYNIAK:** Yes, Your Honor. I just want to  
11 briefly address the COVID argument and then make some  
12 concluding remarks.

13 I don't want to belabor the health issues, but the PSR  
14 reflects that Mr. Levandowski is generally a healthy  
15 40-year-old person. And the medical records that were  
16 submitted do not evidence any of the conditions that are  
17 specifically listed in the CDC guidance as putting people at  
18 increased risk of severe illness. That is, you know, he's not  
19 claiming that he has COPD; that he has asthma; that he has  
20 pulmonary fibrosis. He doesn't take any medications associated  
21 with chronic lung disease. He doesn't have to take an inhaler.

22 So basically, like thousands upon thousands of people, he  
23 at one point has had pneumonia in the past on two occasions.  
24 And from the medical records that were submitted, you see that  
25 he was not hospitalized. And there aren't any chest X-rays or

1 other proof that he has continuing decreased lung function.

2 The note that came from the doctor just said that based on his  
3 medical history, he may have an underlying medical issue.

4 So on this record, it's hyperbole to say, as the defense  
5 did in their sentencing memo, that a custodial sentence could  
6 equal a death sentence. We just don't think that's supported  
7 by this record.

8 And if the Court does feel compelled to show some leniency  
9 or mercy based on the pandemic, then we would suggest that you  
10 do just what you said a moment ago, which is just delay the  
11 self-surrender date. But we are maintaining the request for a  
12 custodial sentence here.

13 And in closing, I just want to address, again, the point  
14 that Your Honor raised about how Mr. Levandowski really is a  
15 brilliant engineer. And the Government agrees with that.  
16 We're not here today to stand against his redemption. You  
17 know, redemption is a wonderful thing. If he wants to give  
18 these lectures and do the community service as a condition of  
19 his supervised release, the Government absolutely supports  
20 that.

21 But there is this notion -- and I addressed it in my  
22 sentencing papers -- that when someone is as brilliant as  
23 Mr. Levandowski and focused as he has been on this mission,  
24 this mission to create a self-driving car that'll make the  
25 world safer and better, that somehow the ends justify the means

1 or that that could somehow excuse his behavior. And that's  
2 wrong.

3 You know, it was wrong for him to take all of these files,  
4 and it erases the contributions of many, many other people that  
5 have also put their blood, sweat, and tears into this project  
6 of making a safer self-driving car.

7 And so, you know, while it's absolutely appropriate to  
8 consider the history and characteristics of this defendant, we  
9 don't think that his exceptionalism or his contributions to the  
10 science of self-driving cars should in any way excuse his  
11 criminal behavior. And that's why we're maintaining the  
12 request for a 27-month sentence.

13 Thank you, Your Honor.

14 **THE COURT:** All right. Mr. Levandowski, you get to  
15 have the last word. So the floor is yours.

16 Again, if you wish to take off your mask, you certainly  
17 may.

18 **THE DEFENDANT:** Thank you, Your Honor.

19 Your Honor, please forgive me. I'm a bit nervous.

20 **THE COURT:** No problem. Please take your time.

21 **THE DEFENDANT:** I want to keep my statement in court  
22 brief and rely on the letter that I submitted to you earlier.

23 I've worked hard to convey how I came to make such a  
24 terrible mistake, as well as the shame I have felt ever since  
25 it came to light. The last three and a half years have forced

1 me to come to terms with what I did and how I can be better  
2 going forward. I deeply regret my actions.

3 I want to take this time to apologize to my colleagues at  
4 Google for betraying their trust. I also apologize to my  
5 entire family for putting them through this and the price they  
6 will continue to pay because of my actions. But I do want to  
7 thank them and my friends and colleagues who have stood by me.

8 I can't change what I did, but I can learn from my  
9 mistakes and then not repeat them. I can tell you with a  
10 hundred percent certainty that I will never come close to  
11 breaking the law again.

12 Thank you, Your Honor.

13 **THE COURT:** You're most welcome.

14 All right. Submitted?

15 **MS. WAWRZYNIAK:** Yes, Your Honor.

16 **MR. RAMSEY:** Yes, Your Honor.

17 **THE COURT:** The sentencing guidelines call for 24 to  
18 30 months because it's Offense Level 17, Category Number IV.  
19 Under the law, I'm required to consider that, and that's as a  
20 starting point.

21 Probation recommends 24 months. The Government recommends  
22 27. The defendant recommends no custody time but 12 months of  
23 home confinement and substantial community service.

24 So that's a brief summary of where we are.

25 I want to say, again, by repeating what I said earlier,

1 Mr. Levandowski is a brilliant engineer. I think I'm qualified  
2 to say that because I sat through and presided over the *Waymo*  
3 *v. Uber* case and at one point in my life, I was headed off to  
4 be an engineer before I veered into law. But I still  
5 understand science and math. And I have tremendous respect for  
6 engineers.

7 And Mr. Levandowski is maybe the best I've ever seen, at  
8 least in my experience, now 75 years. He has vision. And that  
9 vision, in this case, was self-driving cars. We don't get too  
10 many of those in our country. Most engineers are workaday  
11 engineers who crunch the numbers, solve small problems. But  
12 Mr. Levandowski can solve big problems.

13 I respect that. I want you to know that. So that's what  
14 makes this job all the harder.

15 I also think he's a good person at heart. And all those  
16 things you said about him being -- helping others get some  
17 credit in my mind for that record of good behavior.

18 Mr. Ramsey is correct that the law requires that I give  
19 the lowest sentence that will carry out the sentencing  
20 objectives of Congress as set forth in the Sentencing Act.

21 There is one express consideration that drives -- I  
22 consider all of it, but the one that in these white collar  
23 cases always is important is deterrence. I am required to give  
24 a sentence that, when someone else in Mr. Levandowski's  
25 position a few years from now, someone else who is considering

1 stealing trade secrets and going off to start a competing  
2 company will be deterred from doing that. They're right at the  
3 cusp of doing it. And I want them to think: Wait a minute.  
4 If I do this, I could wind up in federal prison like  
5 Mr. Levandowski. Or are they going to think: Oh, I can get  
6 away with it because even if I get caught, I'll get home  
7 confinement. Then I'll take the risk because billions of  
8 dollars, or at least millions and millions are in play.

9 Now, this was not a small crime. I've practiced for  
10 25 years in this district, in this very courthouse,  
11 representing clients like Waymo and some other smaller ones  
12 too, I admit, but I had my share of the bigger clients. I've  
13 been in this job 21 years. So I speak from a lot of experience  
14 in this district and in Silicon Valley. This was the biggest  
15 trade secret crime I have ever seen. This was not small. This  
16 was massive in scale.

17 Mr. Levandowski pled to Count 33 and admits that was a  
18 trade secret, and I totally agree it was. That was the game  
19 plan, the game plan that the opposing coach would love to have.

20 That alone was bad enough. But I want you to know, from  
21 the *Waymo* case, I looked at some of those -- not every one of  
22 them but a lot of those 14,000 files. There's no doubt in my  
23 mind there were a lot of trade secrets in there. Yes, it would  
24 be a little problematic to isolate it page by page, paragraph  
25 by paragraph, but it was chock-full of how Waymo was going to



1 do it. That was a trade secret.

2 Some of that stuff was in the public domain, but the vast  
3 majority of it was a trade secret. So there's no doubt in my  
4 mind, the reason he stole that on December 11th, 2015, was to  
5 have it at the ready in case he needed it when he landed on his  
6 feet outside of Waymo. Otherwise, why would anyone take it?  
7 There's no explanation. It was just theft of something he knew  
8 he shouldn't take.

9 Now, as it turned out, the Waymo design and the Uber  
10 design were sufficiently different that it was hard to track  
11 specific trade secrets into the Uber design, but that doesn't  
12 change the fact that the Uber trade secrets were in his  
13 possession -- I'm sorry -- the Waymo trade secrets were in his  
14 possession and that he had wanted to have them at the ready in  
15 case he needed them.

16 Why did he do this? Of course it was bad judgment, but  
17 billions in the future were in play. And when that kind of  
18 money and financial incentives are there, people, good  
19 people -- good people -- will do terrible things, and that's  
20 what happened here.

21 Now, when this is -- when the next Mr. Levandowski in two  
22 or three years is in Silicon Valley waiting to see whether or  
23 not he will do the same thing, what will be the deterrence  
24 message from what happens here today?

25 Will it be: No. Even if you get caught, which is

1 always -- not possible; maybe you'll get away with it. But  
2 even if you get caught, you get home confinement?

3 I can tell you, most of those people would take that risk.

4 On the other hand, if they say, "I'm going to go to  
5 federal prison, and my family and my children are going to have  
6 to visit me in federal prison," that has a deterrent effect.

7 Some of the considerations that Mr. Ramsey had mentioned  
8 that would mitigate in favor of a lower sentence, I accept  
9 that. His family situation counts for something. His good  
10 conduct for most of his life counts for something. The  
11 contribution he has made to science counts for something, in my  
12 mind, even though you haven't quite argued it in that way.

13 So I am balancing all of those considerations. And the  
14 proper answer in this case is 18 months in federal prison with  
15 a self-surrender date to be selected in the future when the  
16 COVID-19 threat has passed. That's the right answer in this  
17 case. I have no doubt about that.

18 Now, it is my job to read the full sentence; so I will do  
19 that now.

20 Pursuant to the Sentencing Reform Act, it is the judgment  
21 of the Court that Anthony Scott Levandowski is hereby committed  
22 to the custody of the Bureau of Prisons for a term of  
23 18 months, a self-surrender date to be selected in the future  
24 when the COVID-19 danger has passed from the federal prison.

25 Upon release, he will be on supervised release for

1 three years. Within 72 hours of release from the Bureau of  
2 Prisons, he will report in person to the Probation Office in  
3 the district to which he is released.

4 While on supervised release, the defendant shall not  
5 commit any more crimes, shall comply with the standard  
6 conditions of the Court, except mandatory drug testing is  
7 suspended.

8 And here are some more additional conditions.

9 First, I'm going to add one here, which is that he will  
10 give speeches to up to 200 people. It can be spread over  
11 several speeches, but a total of 200 recipients. And the title  
12 of the speech is "Why I Went to Federal Prison." I want  
13 Probation to attend each speech and report back to me. But the  
14 point is, I want the deterrent effect to those young engineers  
15 or young entrepreneurs or whoever, students, I want them to  
16 know the example of Mr. Levandowski.

17 Next, you must have no contact with victims Waymo and  
18 Google.

19 You must pay the restitution and the fine and special  
20 assessment.

21 No new lines of credit without okay of Probation. You  
22 must provide Probation all the financial information they want.  
23 You must check your voice mail and answering machine every day  
24 and follow instructions left by Probation.

25 You must not own or possess any firearms, ammunition,

1 destructive devices, or other dangerous weapons, and must not  
2 be present in a vehicle where you know any such thing is  
3 present.

4 You must cooperate in the collection of DNA as directed by  
5 Probation.

6 You must submit your person, residence, office, vehicle,  
7 electronic devices and their data, including cell phones,  
8 computers, and electronic storage media or any property under  
9 your control to a search to be conducted by Probation or any  
10 peace officer at any time with or without suspicion.

11 Defendant is directed to pay to the U.S.A. a special  
12 assessment of \$100 and a fine in the amount of --

13 What is the maximum fine I can give under the guidelines?  
14 Is it 40,000?

15 **MS. WAWRZYNIAK:** No, Your Honor. The guidelines range  
16 for the fine ranges -- I believe 40,000 is a mid-range point.

17 **MR. RAMSEY:** 95,000.

18 **MS. WAWRZYNIAK:** 95,000 is the maximum.

19 **THE COURT:** All right. 95,000 is the amount. A fine  
20 in the amount of 95,000. This can be paid off through the  
21 Inmate Responsibility Program.

22 It is further ordered that defendant pay Waymo and/or  
23 Google \$756,499.22. This can be worked off through the Inmate  
24 Responsibility Program too.

25 Then there is the \$100 special assessment.

1 All right. Have I left anything out, Ms. Wawrzyniak?

2 **MS. WAWRZYNIAK:** No, Your Honor. At this time,  
3 however, the United States will move to dismiss Counts 1  
4 through 32 of the indictment.

5 **THE COURT:** Motion granted.

6 Yes, Mr. Ramsey?

7 **MR. RAMSEY:** Yes, Your Honor. We would ask for a  
8 recommendation of the Court that he be designated to a facility  
9 near his home here in the Bay Area.

10 **THE COURT:** Yes. So I do make that recommendation.

11 And I think we should set a control date to see how we're  
12 doing on the -- something like, I'm going to guess, February to  
13 come back here to see if we can set a date for self-surrender  
14 at that time. But I'm pretty sure we won't be able to do that  
15 between now and the end of the year.

16 What do you think, Ms. Wawrzyniak?

17 **MS. WAWRZYNIAK:** I think February is fine, Your Honor.  
18 About six months.

19 **THE COURT:** Give me a date in February, Teddy.

20 **THE CLERK:** February 9th.

21 **THE COURT:** 2:00 p.m. February 9.

22 I think -- I don't want him to go to prison until BOP has  
23 the COVID-19 under control. And by that, I mean it's out of  
24 the system. It's not enough just to put people in quarantine.  
25 That won't work. It's got to be COVID-free. We've got to get

1     there.

2             So he's a young man, and if it takes even a year for him  
3     to self-surrender, that's okay with me, until we get the jail  
4     safe, prison safe.

5             All right. Anything more today?

6             **MR. RAMSEY:** No, Your Honor.

7             **THE COURT:** Please pay the check tomorrow.

8             All right. Mr. Levandowski, this is a sad day for you and  
9     for the people who've depended on you. And it pains me to have  
10    to do this to you, but it's my responsibility to do it. It's  
11    the best answer I can give under the circumstances.

12            So good luck to you, sir.

13                   (Proceedings adjourned at 3:56 p.m.)

14                           ---o0o---

**CERTIFICATE OF REPORTER**

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

DATE: Thursday, August 6, 2020

*Ana M. Dub*

Ana M. Dub, CSR No. 7445, RDR, CRR, CCRR, CRG, CCG  
Official Reporter, U.S. District Court